

PATENT

Attorney Docket No. A-70895/RBC/VEJ  
Application No. 09/977,151**REMARKS**

Reconsideration of this Application is respectfully requested. Upon entry of the foregoing amendments, claims 1-5 and 15-23 are pending in the application, with claims 1 and 15 being the independent claims. Support for the subject matter of the amended claims is contained in the application as originally filed. Because the foregoing changes introduce no new matter, their entry is respectfully requested.

Based on the above Amendment and the following Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Applicant notes that the outstanding Office Action is the fourth non-final Office Action in connection with the present invention. The first Office Action (dated December 18, 2002) initially indicated that claims 1-5 and claims 15-23 were allowed, and claims 11 and 12 allowable. The second Office Action (dated June 20, 2003) was an election of species requirement which was subsequently withdrawn. The third Office Action (dated October 2, 2003) still indicated claims 15-23 allowable, but newly rejected claims 1-5 over several newly cited references. The fourth and outstanding Office Action still indicates claims 15-23 allowable, but again rejects claims 1-5 on the basis of several newly formed basis of rejections. For various reasons, including those set forth below, Applicant respectfully believes the present invention to be novel and nonobvious. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

***Rejections under 35 U.S.C. § 102 and 103******Claims 1 and 4***

The Examiner has rejected claims 1 and 4 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,591,999 to Molin et al. ("the Molin patent"). The Molin patent fails to teach or

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suggest the fitment of the present invention with a gripping member including a *semicircular member having inner and outer diameters*, as is called for by amended claim 1.

The Molin patent does not disclose such a gripping member. Instead, the Molin patent discloses a lever-type grip member 12 (see, e.g., FIG. 2). The Examiner considers the remote end portion 27 of grip member 12 to be semi-circular, however, Applicant respectfully disagrees. Grip member 27 is in the form of a flat, solid grip member having arcuate sides and a straight end. The grip member is rounded in that fillets interconnect the straight end and the arcuate sides, however, the grip member is not semicircular. While tear line 21 has a semicircular portion (e.g., a portion in the form of a half of a circle<sup>1</sup>), no portion of grip member 12 is semicircular.

In contrast, the fitment of the present invention includes a semicircular gripping member 69 connected to a frangible membrane 63. Unlike prior fitments, gripping member 69 is neither a flat tab nor a closed ring. Instead, gripping member 69 has an open semicircular configuration which, as previously discussed in the *AMENDMENT AND REPLY* dated March 2, 2004, has certain advantages over prior pull rings and pull tabs of prior closures.

Gripping member 69 is specifically adapted to facilitate a user in gripping and pulling gripping member 69 when removing frangible membrane 63 from fitment 32. See, e.g., present application, paragraph no. 55. For example, gripping member 69 is flexible and allows the user to straighten semicircular segment 70 to some degree allowing the segment to better conform to the contour of the user's finger. See present application, paragraph no. 60. Such a configuration is particularly useful in the case of smaller fitments (e.g., 28 mm and smaller fitments), particularly when the gripping member is located within the spout of the fitment. With such smaller fitments, the spout opening of the fitment is small and the pull tab or pull ring must be even smaller. In the case of a pull tab, the tab must be sufficiently narrow to allow one to insert one's finger into the spout, around and under the tab. In the case of a pull ring, the outer diameter of the pull ring is smaller than the inner diameter of the spout, and the inner diameter of

<sup>1</sup> See Merriam-Webster Online Dictionary, MERRIAM-WEBSTER ONLINE ([www.Merriam-Webster.com](http://www.Merriam-Webster.com)) copyright 2004 by Merriam-Webster, Incorporated (copy of printout attached).

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the pull ring is smaller still. Accordingly, it may be difficult for a user, particularly a user with larger fingers, to insert their fingers through the pull ring of a smaller fitment.

Furthermore, the semicircular/free end configuration of gripping member 69 may simplify the manufacturing process by providing a shape that more readily de-molds. *See, e.g.,* present application, paragraph no. 65. For example, the semicircular configuration of gripping member 64 breaks open the loop of conventional pull rings and allows the gripping member to bend and flex out of the way as mold tooling retracts. The forces involved as the gripping member of the present invention flexes and snakes its way out of a mold cavity is likely to be substantially less than the compressive and/or expansion forces involved in demolding a fitment having a closed ring as tooling is removed from the closed ring and/or vice versa. In the case of demolding a closed ring, the higher compressive and/or expansion forces involved may in some cases be sufficient to damage the frangible membrane.

For at least these reasons, Applicant respectfully submits that the Molin patent does not anticipate independent claim 1. Applicant submits that claim 4, which depends from claim 1, is allowable over the cited art for at least the same reasons noted above.

#### ***Claims 1-5***

The Examiner has rejected claims 1-5 under 35 U.S.C. § 102 and 103 as being unpatentable over U.S. Patent No. 5,839,627 to Hicks et al. ("the Hicks patent") alone or in combination with U.S. Patent No. 3,135,441 to Wise et al. ("the Wise patent") or U.S. Patent No. 5,301,849 to Guglielmini et al. ("the Guglielmini patent"). The Hicks, Wise and Guglielmini patents, taken individually or combined, fail to teach or suggest the fitment of the present invention with a gripping member including a *semicircular member*, as is called for by amended claim 1.

The Hicks patent fails to disclose or suggest a such a fitment. The Examiner acknowledges that the Hicks patent fails to teach or suggest "a semi-circular member". *See* Office Action, page 2, section 4, second paragraph. The Examiner also acknowledges that the Hicks patent fails to teach or suggest "the semi-circular member being helical and extending

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approximately 270°." *Id.* Instead, the Examiner considers it obvious for one of ordinary skill in the art to modify pull device 30 "since such a modification would have involved a mere change in the shape of a component." *See* Office Action page 2, section 4, third paragraph. Applicant respectfully disagrees. While the Hicks patent discloses that pull device 30 "may be a ring or tab or handle or any other protrusion suitable for grasping by the user", the Hicks patent fails to disclose that such device may be semi-circular. Nor does the Hicks patent teach or suggest such a pull device having an open configuration with inner and outer diameters.

The Wise patent fails to make up for the deficiencies of the Hicks patent. Firstly, the Wise patent does not disclose an open semicircular gripping member. Instead, the Wise patent teaches away from such a configuration in that pull out tab 68 is a flat tab (more akin to Molin's grip member 12 than Hick's pull device 30). Moreover, while the Wise patent discloses ribs 72 extending from the flat tab, the Wise patent fails to disclose protrusions extending from *an inner diameter* as is called for by claim 2.

The Guglielmini patent also fails to make up for the deficiencies of the Hicks patent as it does not disclose a semicircular gripping member. Instead, the Guglielmini patent also teaches away from such a configuration in that pulling ring 12 is a closed ring, as evidenced by the cross-hatching in FIGS. 2 and 4.

In contrast, the fitment of the present invention includes a semicircular gripping member 69. As noted above, such a configuration facilitates users in gripping and pulling the gripping member. *See, e.g.,* present application, paragraph no. 55. As also noted above, such a configuration may simplify the manufacturing process by providing a shape that more readily demolds. *See, e.g.,* present application, paragraph no. 65. For at least these reasons, Applicant respectfully submits that the Hicks, Wise and Guglielmini patents, taken individually or combined, do not render obvious independent claim 1. Applicant submits that claims 2-5, which depend from claim 1, are allowable over the cited art for at least the same reasons noted above.

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Should the Examiner maintain her rejection on the basis that the semicircular gripping member of the present invention involves a mere change in shape, Applicant respectfully requests citation of a reference in support of the Examiner's position. *See M.P.E.P.* § 2144.03.

***Allowable Subject Matter***

Applicant thanks the Examiner for indicating that claim 15-23 are allowable.

***CONCLUSION***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

The Director is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extension of time or additional claims, and/or credit any overpayment to Deposit Account No. 50-2319 (Order No. 463678-00192; Docket No. A-70895/RBC/VEJ).

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Prompt and favorable consideration of this Amendment and Response is respectfully requested.

Respectfully submitted,

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Date: December 6, 2004

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semicircular canal

Main Entry: **semi-cir-cle**

Pronunciation: 'se-mē-'s&amp;r-k&amp;l, 'se-'mī-, -mī-

Function: *noun*Etymology: Latin *semicirculus*, from *semi-* + *circulus* circle

1 : a half of a circle

2 : an object or arrangement of objects in the form of a half circle

- **semi-cir-cu-lar** /'se-mē-'s&r-ky&-l&r/ *adjective*For **More Information on "semicircle"** go to [Britannica.com](http://Britannica.com)Get the **Top 10 Search Results for "semicircle"**

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